No. 435

IN THE

SUPREME COURT OF THE UNITED STATES

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Appellant and Cross-Appellee,
versus
MINNIE L. B. HAMILTON,
Appellee and Cross-Appelee.
and
(Reverse Title)
and
OAKLAND CORPORATION,
Appellant,
versus
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Appellee.

Petition for Writ of Certiorari and Brief in Support of Petition

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INDEX

CITATIONS

CITATIONS—Continued

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This petition for certiorari is based upon the fact that the Circuit Court of Appeals for the Fifth Circuit has decided an important question of Florida law in a way probably in conflict with applicable Florida decisions.

The question of Florida law is whether proof of suicide by circumstantial evidence must be made to the exclusion of any other reasonable hypothesis or may be made merely by a preponderance of inferences.

The Circuit Court of Appeals held that sucide may be proven by circumstantial evidence merely by a preponderance of inferences. The applicable Florida decisions hold that circumstantial evidence of suicide must be so strong as to exclude any other reasonable hypothesis.

The facts giving rise to this question are as follows:

Minnie L. B. Hamilton sued the Mutual Life Insurance Company of New York for the death benefits provided in two policies of life insurance. Proof relied upon by the plaintiff to show death and time of death of Hamilton, the insured and husband of plaintiff, was entirely circumstantial. Hamilton disappeared on December 28, 1928. At that time he was residing in a rooming house in Jacksonville, Florida, and was engaged in an unsuccessful business venture with his daughter and son-in-law. He had become estranged from his wife, who lived in Miami, and he had not seen her for about a year. He had purposely avoided her when returning from Cuba through Miami in the summer of 1928. He was not contributing to the support of his wife or children. It was known to his wife and family that he was following a Mrs. Louckes around the country. This was not a novel situation as Hamilton had been convicted in Georgia for living with a negro woman and had served a penitentiary term. He had told his daughter that the income from the business was insufficient to support the three of them (Hamilton, his daughter, and her husband), and that he was going away to seek employment elsewhere. On the night of December 28, 1928, he gave the office key to his daughter. The next morning he was gone, having taken with him his baggage, his clothes, and all his personal effects. His

daughter was not concerned over his departure and did not institute a search for him until some time thereafter, she being of the opinion that in accordance with his avowed intention he was seeking employment elsewhere. When search was commenced, no trace of Hamilton could be found. His body was not found. None of his baggage nor his personal effects was found.

The seven-year presumption statute was relied upon to prove the fact of death. However, it was necessary to prove that Hamilton died prior to the expiration of the seven-year period, inasmuch as the extended value of the insurance policies expired prior to seven years. Therefore, the **time** of death became of paramount importance. The plaintiff advanced the only theory which was open to her: viz., that Hamilton committed suicide at the time of his disappearance. The jury, by special verdict, found that he died on December 29, 1928.

The Supreme Court of Florida in an unbroken line of decisions has held that where circumstantial evidence is relied upon to prove suicide it must be so strong as to exclude every other reasonable hypothesis:

> **Sovereign Camp of W. O. W. v. Hodges, 72 Fla. 467, 73 So. 347;**
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> **Mutual Life Ins. Co. of N. Y. v. Johnson, 122 Fla. 567, 166 So. 442;**
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> **Mutual Life Ins. Co. of N. Y. v. Bell, 147 Fla. 734, 3 So. (2) 487;**
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> **New York Life Ins. Co. v. Satcher, ——— Fla. ———, 12 So. (2) 108 (1943).**

All of these cases involve proof of suicide by circumstantial evidence. None of these cases was cited as authority by the Circuit Court of Appeals. Instead, another series of cases (see Appendix I) dealing with proof by circumstantial evidence of disputed facts **other than suicide** and permitting proof of such other facts by circumstantial evidence merely to the extent of a preponderance of inferences, was cited.

There is no Florida case which holds, or intimates, that suicide as a disputed fact may be proved by a preponderance of inferences from circumstantial evidence. All Florida cases hold that where suicide is an issue, circumstantial evidence must be so strong as to exclude every other reasonable hypothesis.

The opinion of the Circuit Court of Appeals shows on its face that the foregoing facts do not exclude every other reasonable hypothesis because the court proposes a series of questions left in doubt by the evidence, each of which contains an hypothesis inconsistent with suicide (see Appendix II).

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Circuit Court of Appeals said:

> "The plaintiffs have relied wholly upon inferences which they draw from circumstantial evidence to prove death by suicide on the 29th day of December, 1928. There is no direct testimony of death at any time or in any manner."
> (Tr. 404-5)

In the Circuit Court of Appeals we relied largely upon the decision of the Fifth Circuit in the case of **Mutual Life Ins. Co. of N. Y. v. Zimmerman, et al, 75 Fed. (2) 758.** The opinion in that case was written by Judge Sibley, who did not participate in the case at bar. In the Zimmerman case the court said:

> "Not quite seven years of disappearance had gone by at the time of the trial, so that no presumption of law had arisen concerning death, but **if it had the presumption would not be of death at any particular date within the seven years. If death must be established at a definite date before the expiration of the seven years, something besides the presumption is necessary.** Davie v. Briggs, 97 U. S. 628, 24 L. Ed. 1086; United States v. Hayman (C. C. A.) 62 F. (2d) 118. **The question here is whether Zimmerman was drowned on August 24, 1927, for there is nothing to show that he died by any other means or on any other date.** The jury, though finding he was dead, declined to find that the death was accidental. The verdict seems to imply suicide; but in our opinion the evidence does not show that he was dead at all at the expiration of the insurance. None of the uncontradicted and unimpeached testimony which is reasonably credible can be arbitrarily rejected, but all must be construed together. * * * * * We must therefore conclude that while Zimmerman was indulgent and affectionate to his wife and daughter, he also indulged a taste for other women, and was on intimate terms at least with Annie, who had an automobile, and, like himself,

disappeared. He had left wife and daughter once before, though he had in late years been active and diligent in business and had held steady employments. It is also true that in 1927 he was headed for financial disaster, and it was imminent, and some of his transactions, especially his borrowing $3,000 on a note signed in the name of Fugazzi Bros., who did not receive the money, seemed likely to embarrass him greatly. He does not therefore stand as one of blameless domestic, civic, and business character who would have every reason to disclose his whereabouts and return to his associates if living, and whose disappearance therefore could only with the greatest difficulty be explained as voluntary.

* * * * *

"There is a possibility that he is dead, but the circumstances are not such as to make that the only probable explanation of them. Circumstantial evidence, even in a civil case, must not only consist with the theory that authorizes recovery, but must fairly and reasonably exclude any other explanation of the facts. Unless it does this, the burden which rests upon the plaintiff to prove her case is not carried. Pennsylvania R. Co. v. Chamberlain, 288 U. S. 333, 53 S. Ct. 391, 77 L. Ed. 819; Florida East Coast R. Co. v. Acheson, 102 Fla. 15, 135 So. 551, 552, 137 So. 695, 140 So. 467; Foster v. Thornton, 113 Fla. 600, 152 So. 667. There is no proof here of an unusual peril to the insured which would probably have killed him, as referred to in Davie v. Briggs, 97 U. S. 628, 24 L. Ed.

1086, and Brownlee v. Mutual Benefit Health & Acc. Ass'n (C. C. A.) 29 F. (2d) 71."

We should mention here the fact that in the case at bar there is no proof of an unusual peril to bring this case within the rule laid down in Davie v. Briggs, supra.

The Circuit Court of Appeals decided the case at bar upon the erroneous assumption that the law regarding circumstantial evidence as it relates to proof of suicide was changed subsequent to the Zimmerman case. It said:

> "Since the opinion by Judge Sibley in the case of Mutual Life Insurance Company of New York vs. Zimmerman, supra, the Florida rule that circumstantial evidence relied upon in a civil case must not only be consistent with the theory that authorizes recovery but must fairly and reasonably exclude any other explanation of the facts, has been modified by King vs. Weis-Patterson Lumber Company, 124 Fla. 272, 168 So. 858; Stigletts vs. McDonald, 135 Fla. 385, 186 So. 233; and Fireman's Fund Indemnity Co. vs. Perry, 149 Fla. 410, 5 So. 2d 862.
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> * * * * *
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> "It, therefore, is not the rule in Florida now that circumstantial evidence in a civil case must exclude every other reasonable hypothesis than the one proposed to be proven. It is sufficient now if the circumstantial evidence amounts to a preponderance of all reasonable inferences that can be drawn from the circumstances in evidence to

> the end that the evidence is not reasonably susceptible of two equally reasonable inferences."
> (Tr. 394-5)

So, it is contended, and we shall presently demonstrate, that the Circuit Court of Appeals decided an important question of local law in a way probably in conflict with applicable local decisions.

The Florida rule regarding circumstantial evidence was exactly the same before the Zimmerman case as it was afterward. The Zimmerman case was decided in 1935. The Supreme Court of Florida in 1933, in the case of **City of Pensacola v. Herron, 112 Fla. 742, 150 So. 877,** announced exactly the same rule regarding circumstantial evidence and in almost identical language as is set forth in the King case, which was decided in 1936, and which is stated by the Court to have changed the rule regarding circumstantial evidence. There was, therefore, **no change** in the Florida law after the Zimmerman case was decided. As hereinafter pointed out, Judge Sibley, in the Zimmerman case, correctly applied the Florida rule regarding the proof of suicide by circumstantial evidence.

The early rule of the Florida Supreme Court was that in all cases proof by circumstantial evidence must be so strong as to exclude every reasonable hypothesis to the contrary. Thus it is said in **Florida East Coast Ry. Co. v. Acheson, 102 Fla. 15, 135 So. 551:**

> "The value of circumstantial evidence consists in the conclusive nature and tendency of the circumstances relied upon to establish any contro-

verted fact. Such evidence is always insufficient, where, assuming all to be proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of proof. Whetson v. State, 31 Fla. 240, 12 So. 661."

Later, the rule was relaxed in some types of cases and to this class belongs those cases relied on by the Circuit Court of Appeals in its opinion.

King v. Weis-Patterson Lumber Company, 124 Fla. 272, 168 So. 858.

Stigletts v. McDonald, 135 Fla. 385, 186 So. 233.

Fireman's Fund Indemnity Co. v. Perry, 149 Fla. 410, 5 So. 2d 862.

Reed v. American Insurance Co. of Newark, 128 Fla. 549, 175 So. 224.

None of these cases, however, involved the issue of suicide. The King case involved merely an inference of negligence in permitting an accumulation of a quantity of inflammable trash. The Stigletts case related to proof of a gift by circumstantial evidence. The Perry case involved the disappearance of insured jewelry. The Reed case involved a fire insurance loss.

Where the issue is suicide and circumstantial evidence is relied upon, the presumption against suicide comes into play in the judicial process and proof is required to a

much stronger degree. The first case involving suicide is **Sovereign Camp of W. O. W. v. Hodges, 72 Fla. 467, 73 So. 347,** where the court said:

> "The value of circumstantial evidence consists in the conclusive nature and tendency of the circumstances relied upon to establish any controverted fact. This language of Mr. Justice Mabry in the case of Whetson v. State, 31 Fla. 240, 12 South. 661, received the unanimous approval of this court as then constituted, and the case has several times been cited with approval by this court. Gantling v. State, 40 Fla. 237, 23 South. 857; Jenkins v. State, 35 Fla. 737, 18 South. 182, 48 Am. St. Rep. 267. In the Whetson Case the court quoted from Mr. Starkle in his work on Evidence as follows:
>
> > 'Such evidence is always insufficient where, assuming all to be proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of proof. Whenever, therefore, the evidence leaves it indifferent which of several hypotheses is true, or merely establishes some finite probability in favor of one hypothesis rather than another, such evidence cannot amount to proof, however great the probability may be.'
>
> Mr. Justice Taylor, speaking for the court in Kennedy v. State, 31 Fla. 428, 12 South. 858, said:

> 'First, that the circumstances from which the conclusion is drawn should be fully established; second, that all the facts should be consistent with the hypothesis; third, that the circumstances should be of a conclusive nature and tendency; and fourth, that the circumstances should, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved.' "

The next suicide case decided by the Florida Supreme Court is **Mutual Life Ins. Co. of New York v. Johnson, 122 Fla. 567, 166 South. 442,** wherein the Supreme Court says of the presumption against suicide:

> "It prevails when the cause of death is unknown,"

and

> "The rule most generally approved is that when circumstantial evidence is relied on to establish self-destruction, the one relying on it carries the burden of proving it **to the exclusion of every reasonable hypothesis of accidental death. . . .** The presumption against suicide cannot stand against uncontroverted evidence direct or circumstantial, which points **conclusively** to self-destruction, but **when the cause of death is unexplained,** or, if the evidence tends to establish death by accidental means, or **some of the evidence is consistent with a reasonable hypothesis that death was not self-imposed, the presumption against self-destruction may prevail."**
>
> (Emphasis supplied.)

The Circuit Court of Appeals, having found "there is no direct testimony of death at any time or in any manner", certainly has brought the case at bar within the pronouncement of the Johnson case, supra, because, conceding for the sake of the argument that Hamilton was dead, the "cause of death is unknown."

To the same effect are **Gulf Life Ins. Co. 126 Fla. 568, 172 South. 235,** and **Mutual Life Ins. Co. of N. Y. v. Bell, 147 Fla. 734, 3 South. (2) 487.**

The last case involving proof of suicide by circumstantial evidence is **New York Life Ins. Co. v. Satcher, ——Fla.——, 12 South. (2d) 108 (1943),** wherein the court said:

> "The rule is generally approved that when the defendant comes forward with a plea of suicide he must prove it beyond a reasonable doubt just as he would the defense in a criminal case. The evidence must exclude every other reasonable hypothesis of death. If the evidence is such as to leave the minds of the jury in a state of equipoise and they are unable to say whether death was by accident or by suicide, they should not find a verdict for more than the face of the policy because accidental death was not proved, but when there is evidence both ways, the presumption against suicide supports accidental death and to be overcome, the evidence must leave room for no other reasonable hypothesis than that of suicide."

The court has correctly held in its opinion that the

verdict of the jury in this case can be supported only upon the theory that Hamilton committed suicide on December 29, 1928:

> "The plaintiffs have relied wholly upon inferences which they draw from circumstantial evidence to prove death by suicide on the 29th day of December, 1928. There is no direct testimony of death at any time or in any manner."
>
> (Opinion page 13)

The numerous questions which the court framed in its opinion as being suggested by the evidence demonstrates that numerous hypotheses inconsistent with suicide have not been excluded under the law laid down and consistently followed by the Florida Supreme court, both before and after the Zimmerman case.

We submit that the Circuit Court of Appeals has overlooked the application of this rule of Florida law and that the application of this rule requires a reversal of this case.

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